

**MINUTES OF THE MEETING OF THE
UNIFORM COMMERCIAL CODE COMMITTEE
OF THE STATE BAR OF CALIFORNIA**

January 6, 2004
9:30 a.m. to approximately 12:00 p.m.
Videoconference Meeting at
Morrison & Foerster's
Los Angeles, San Francisco, Palo Alto and San Diego Offices

The January 6, 2004 meeting of the Uniform Commercial Code Committee (the "Committee") was called to order at approximately 9:30 a.m. with Andrew Erskine and Pauline Stevens presiding.

A. Administrative Matters.

1. Appointment of Secretary. David Thill was appointed as the secretary for the meeting.

2. Approval of December 3, 2003 Meeting Minutes. The minutes of the December 3, 2003 meeting were presented in the form disseminated prior to the meeting and after minor revisions approved as corrected.

3. Future Meeting Dates/Locations. The Committee reconfirmed and established future meeting dates as follows:

February 3, 2003 (Tuesday), Videoconference, 9:30 a.m. at the offices of Morrison & Foerster in Los Angeles, San Francisco, Palo Alto and San Diego.

March 2, 2004 (Tuesday), Videoconference, 9:30 a.m. at the offices of Morrison & Foerster in Los Angeles, San Francisco, Palo Alto and San Diego.

April 8, 2004 (Thursday), Videoconference, 9:30 a.m. at the offices of Morrison & Foerster in Los Angeles, San Francisco, Palo Alto and San Diego.

May 13, 2004 (Thursday), 9:00 a.m., 5th Annual Spring Meeting of the Business Law Section of the State Bar of California in Conjunction with the California Bankers Association (Hyatt Huntington Beach Resort & Spa). Meeting open to all meeting attendees. Each subcommittee (Article 6, Article 7, Certificate of Title, Opinion) to prepare 10-15 minute substantive presentation.

B. Report of the Articles 6 and 7 Subcommittees.

Andrew Erskine reported that the Executive Committee approved both Article 6 and Article 7 reports. Discussion followed regarding posting the reports to the website.

Harry Sigman reported that it was not yet clear that this is the year for Article 6 repeal in California. Several other states, including Maryland, Indiana, Arizona and North Carolina, may consider a repeal of Article 6 this year, which would strengthen the argument in favor of repeal in California. Mr. Sigman suggested waiting for another year until political decision is made in Sacramento whether to go forward. He suggested we do not put Article 6 Report on the website yet. He also reported that many if not most states are likely to introduce revised Article 7.

C. Report of the Article 2/2A Subcommittee.

Paul Barkes reported on the status of the Article 2/2A Subcommittee. Mr. Barkes reported that there are numerous problems with Article 2, including with respect to remedies because of changes in the structure of the statute. For example, although revised Article 2 addresses options upon a “rightful cancel,” nowhere does it provide for a right to cancel. These comments were given to NCCUSL through Mr. Sigman. If possible, we would prefer to fix these problems through NCCUSL to avoid California nonuniformity. Time is short for submission of any further comments. The Subcommittee will continue drafting the Article 2 report assuming that we now have the final version. If this goes forward in this year’s legislature, means that the February meeting needs to focus on the substance and work on quick turn around.

D. Report on Uniform Certificate of Title Act Subcommittee.

Konrad Schreier reported on the Uniform Certificate of Title Act Subcommittee. Mr. Schreier reported that there are substantial disparities between the current draft uniform act and the California vehicle code, which is much broader in scope and encompasses not only titling, but also registration, law enforcement and licensing. Preliminarily, it does not appear that the Uniform Act deals adequately with some of the security issues. The next step is to further analyze and address security issues and come up with a proposal for an omnibus approach. Mr. Sigman suggested that there is a sufficient diversity of interests that a conscious decision may have been made to avoid those issues. He asked if there is a way to weave into California law the titling aspects of the Uniform Act and leave intact the security issues. Mr. Schreier indicated some aspects in the Uniform Act that are substantially different and would remove the protections that are embedded in the transfer of title provisions. The focus of consumer lobby is protections on authenticity of retitling. The present system requires original certificate of title signed by the relevant parties. The state has the authority to reject. The uniform provision requires acceptance under certain circumstances. Mr. Sigman suggested that there must be some technological approach to resolve this. He queried whether the objective is just to have a safe signature or to attempt to ensure a single authenticated original document. Mr. Sigman noted that there is an ALI meeting in May, so the drafting committee must have input by no later than March. The goal is to head off errors at the national level and then deal with what the California approach should be.

E. Report of the Opinion Subcommittee.

Pam Martinson indicated that progress toward a final report is proceeding. The subcommittee is reviewing a draft form of opinion.

F. Report of “Hidden Lien” Subcommittee.

Bob Anderson requested guidance from the Committee on the scope and objective of the subcommittee. It was suggested that the goal should be preparation of a report that could give some guidance to lawyers as to where to look when confronted with hidden lien issues. Changes in federal law, such as the USA Patriot Act, may have created additional sources of hidden liens. The starting point for the subcommittee will be to update and review for accuracy the footnote in the opinion report that addresses some possible hidden liens under California law.

G. Report on Website Review and Development Project.

Gary Rosenbaum reported that the State Bar webmaster has been more responsive to posting requests. Work is continuing to identify appropriate links to be added to the site, in particular links to other states for UCC filing and search information. Regarding the web-based continuing education initiative, Peter Szurley reported the Executive Committee hasn't yet set up guidelines, but that a subcommittee is working on them now. The hope is to have them out in the next month.

H. Report on State Bar Automation Project.

Kathleen Vasquez from the Secretary of State's office addressed the Committee regarding the filing automation project. She reported that for a number of reasons, including the elevated “orange” security alert, the roll out target date has been moved back. Her office is presently finalizing training, including on user procedures and help desk issues. Preparation of updated user guides are in process. All historical documents have been scanned to support record retention. There has been no change in the “purge” dates applicable to records (one year after lapse date), whether held in physical or electronic form.

Currently, the projection for testing of the new system is set for early to mid-February. Although there is not yet a specific date targeted for the full roll-out, the projection is mid to late spring.

Scheduled beta testing should occur in early to mid-February. Updated code/web component is scheduled in the next couple of weeks - by approximately the third week of January. Ms. Vasquez reported that throughout the testing process they can update the system based on feedback, although major functionality changes would be difficult. She will continue to coordinate through Vasco Morais to provide the Committee opportunities for input.

I. Report of Legislative Subcommittee.

Marty Opich reported that the legislative session commenced January 5. The search logic still yields irrelevant information and will be updated by the subcommittee. The subcommittee now has developed a good protocol for monitoring introduced legislation and communicating relevant information to the Committee. Searches will be done once a week and will report to the Committee no less frequently than every two weeks. Communications from the subcommittee will be summaries of bills of interest to the Committee. The subcommittee will take the initiative to advise the Committee of the need for any action by the Committee as a whole.

J. Program Reports.

The Committee is allocated two hours at the Business Law Section Spring Meeting. Mr. Morais reported that it was anticipated that electronic filing would have been up and running. Although that may be delayed, we would hope nonetheless to have something to present on this. Also, we should be prepared to report on what is going on in other states regarding changes to electronic and web-based filing, searches, etc.

Other suggestions included presentation of substantive materials and case law on Article 9. It was decided that insufficient time would be available for a discussion on hidden liens, which should be put off until the fall. Also, the May Meeting of the Committee will be open, with substantive presentations by each subcommittee.

The State Bar Meeting is scheduled for October 7-10. We will request a two hour slot. Topics will include hidden liens. Mr. Szurley will check on the deadlines for submission of materials.

K. Publications Discussions.

Pam Martinson reported on the updated style manual guidelines circulated to the Committee. Among other matters addressed in the manual, reports will be attributed to the Committee as a whole, not to subcommittees, and without references to individuals. Reformatting will move some text to the left margin. Several other changes were discussed and will be incorporated in the style guide.

L. Other.

Bob Slattery reported on ALI and NCCUSL developments, including updates from websites, including ongoing discussions regarding electronic payment systems. Ms. Stevens requested that Jaryn Barker and Larry Lawrence put together a revision of the proposed uniform text that pulls in existing California law on demand drafts in place of remotely created items. This is needed to anticipate reaction of the financial institutions to any change to California law in this regard.

* * * * *

The meeting was adjourned at approximately 12:00 p.m.